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under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person that otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

(l) *Effective Date.* This section is effective until December 31, 1996.

[T.D. 8137, 52 FR 13432, Apr. 23, 1987, as amended at 60 FR 66134, Dec. 21, 1995; 61 FR 11308, Mar. 20, 1996]

PART 36—CONTRACT COVERAGE OF EMPLOYEES OF FOREIGN SUBSIDIARIES

Sec.

AUTHORITY: Secs. 3121, 7805, 68A Stat. 417, as amended, 917; 26 U.S.C. 3121, 7805.

SOURCE: T.D. 6145, 20 FR 6577, Sept. 8, 1955; 25 FR 14021, Dec. 31, 1960, unless otherwise noted.

§ 36.3121(l)–0 Introduction.

(a) The regulations in this part deal with the circumstances under which a domestic corporation may enter into an agreement with the Internal Revenue Service for the purpose of extending the insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States as employees of a foreign subsidiary of the domestic corporation, and with the obligations of a domestic corporation which enters into such an agreement. The provisions of the Internal Revenue Code of 1954, as amended, to which the regulations in this part pertain are contained in section 3121(1).

The liabilities assumed under an agreement entered into pursuant to such section are based on the remuneration for services covered by the agreement. Such agreement may not be effective prior to January 1, 1955.

(b) Although the obligations incurred under an agreement entered into pursuant to section 3121(l) of the Internal Revenue Code of 1954, as amended, must be distinguished from the obligations imposed on employers with respect to the taxes under the Federal Insurance Contributions Act, the two are similar in many respects. Accordingly, the regulations in this part are prescribed as a supplement to the regulations (26 CFR (1954), Part 31, Subpart B) relating to the employee tax and the employer tax imposed by the Federal Insurance Contributions Act. The terms used in the regulations in this part have the same meaning, unless otherwise provided, as when used in the regulations relating to the taxes imposed by such act.

(c) The regulations in this part constitute Part 36 of Title 26 of the Code of Federal Regulations. As used in the regulations in this part, the word ''Code'' means the Internal Revenue Code of 1954, as amended, and the term ''Federal Insurance Contributions Act'' means chapter 21 of such Code. All references to sections of law are references to the Code unless otherwise indicated. The number of each section of the regulations begins with 36 followed by a decimal point (36.). Numbers which do not begin with 36 followed by a decimal point are numbers of sections of law unless otherwise indicated. In identifying sections of regulations, the symbol ''§'' is used.

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7693, May 15, 1969; T.D. 7665, 45 FR 6090, Jan. 25, 1980]

§ 36.3121(l)(1)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.

(a) *In general.* (1) Any domestic corporation having one or more foreign subsidiaries may request the Internal Revenue Service to enter into an agreement for the purpose of extending the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services performed outside the United States by all citizens of the United States who are employees of any such foreign subsidiary. See § 36.3121(l)(8)–1, relating to the definition of foreign subsidiary. Except as provided in § 36.3121(l)(5)–1, relating to the effect of the termination of an agreement entered into pursuant to the provisions of section 3121(l), the Internal Revenue Service shall, at the request of a domestic corporation enter into such agreement on Form 2032 in any case where a Form 2032 is executed, and submitted by the domestic corporation in the manner prescribed in this section. A domestic corporation may not have in effect at the same moment of time more than one agreement on Form 2032.

(2) An agreement authorized in section 3121(l)(1) may not be made applicable to any services performed outside the United States which would not constitute employment, for purposes of the taxes imposed under the Federal Insurance Contributions Act, if the services were performed within the United States. Thus, such an agreement shall have no application with respect to any services performed outside the United States which, if performed within the United States, would be specifically excepted from employment under any of the numbered paragraphs of section 3121(b), or which, although not so excepted, would be deemed not to be employment by application of section 3121(c), relating to included and excluded services. Further, an agreement may not be made applicable with respect to any services performed outside the United States which constitute employment, as defined in section 3121(b). Thus, an agreement may not be made applicable to services for any employer performed by any employee on or in connection with an American vessel or American aircraft when outside the United States, if (i) performed under a contract of service which is entered into within the United States or (ii) during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, because such services constitute employment as defined in section 3121(b).

An agreement may not be made applicable to remuneration which would not constitute wages, as defined in section 3121(a), even if the services to which such remuneration is attributable had constituted employment.

(3) The terms ''corporation'', ''domestic'', and ''foreign'', as used in the regulations in this part, have the meaning assigned by paragraphs (3), (4), and (5), respectively, of section 7701(a). Section 701(a) (3), (4), and (5) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title [Internal Revenue Code of 1954], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(3) *Corporation.* The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term ''domestic'' when applied to a corporation * * * means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) *Foreign.* The term ''foreign'' when applied to a corporation * * * means a corporation * * * which is not domestic.

(b) *Form and contents of agreement.* Form 2032 is the form prescribed for the agreement authorized in section 3121(l)(1). The agreement shall include provisions substantially as follows:

(1) That the agreement shall apply to all services performed outside the United States by all citizens of the United States who are in the employ of the foreign subsidiary or subsidiaries to which the agreement is made applicable, but only to the extent that the remuneration paid each employee for such services would constitute wages if paid by one employer for services performed in the United States;

(2) That the agreement shall not apply to any services which constitute employment within the meaning of section 3121;

(3) That the agreement shall become effective on the first day of the calendar quarter in which the Form 2032 is signed by the district director or director of the service center or on the first day of the next succeeding calendar quarter, whichever is specified in the agreement;

(4) That the domestic corporation will pay, as required by the regulations in this part, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111, respectively, if the remuneration for the services covered by the agreement constituted wages;

(5) That the domestic corporation will pay, in accordance with written notification and demand therefor to the domestic corporation, amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable if the remuneration for services covered by the agreement constituted wages; and

(6) That the domestic corporation will comply with all provisions of the regulations in this part.

(c) *Execution and filing of Form 2032.* The request of any domestic corporation that the Internal Revenue Service enter into an agreement with the corporation on Form 2032 shall be signified by the corporation by executing and filing Form 2032 in triplicate. Such form shall be executed and filed in accordance with the regulations in this part and the instructions relating to the form. Each copy of the form shall be signed and dated by the officer of the corporation authorized to enter into the agreement, shall show the title of such officer, and shall have the corporate seal affixed thereto. A certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing the authority of such officer so to act shall accompany the form. Form 2032 executed and filed as provided in this paragraph shall be signed and dated by the district director or director of the service center and, upon such signing, the Form 2032 so executed and filed will constitute the agreement authorized in section 3121(l)(1). The Internal Revenue Service will return one copy of the agreement to the domestic corporation, will transmit one copy of the Department of Health, Education, and Welfare, and will retain one copy (together with all related papers).

[T.D. 6145, 20 FR 6577, Sept. 8, 1955, as amended by T.D. 7012, 34 FR 7693, May 15, 1969]

§ 36.3121(l)(1)–2 Amendment of agreement.

(a) An agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 may be amended so as to be made applicable, in the same manner and under the same conditions, with respect to any one or more of the foreign subsidiaries of the domestic corporation not previously named in the agreement. See § 36.3121(l)(2)–1(b), relating to the effective period of an amendment of an agreement.

(b) Form 2032 Supplement is the form prescribed for use in amending an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1.

(c) A domestic corporation shall signify its desire to amend an agreement entered into by the corporation as provided in § 36.3121(l)(1)–1 by executing and filing Form 2032 Supplement in triplicate.

(d) Form 2032 Supplement shall be executed and filed in the manner and in conformity with the requirements prescribed in the instructions relating to such form and in § 36.3121(l)(1)–1(c) in respect of an agreement on Form 2032. Form 2032 Supplement executed and filed as provided in this paragraph shall be signed and dated by the district director or director of the service center, and, upon such signing, the Form 2032 Supplement so executed and filed will constitute an amendment of the agreement entered into on Form 2032. The Internal Revenue Service will return one copy of the amendment to the domestic corporation, will transmit one copy to the Department of Health, Education, and Welfare, and will retain one copy (together with all related papers).

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(1)–3 Effect of agreement.

(a) *Liability for amounts equivalent to tax*—(1) *In general.* A domestic corporation which has entered into an agreement (as provided in § 36.3121(l)(1)–1, or any amendment thereof (as provided in § 36.3121(l)(1)–2, incurs liability under the agreement in respect of certain remuneration paid by each foreign subsidiary named in the agreement, or any amendment thereof. Liability is incurred in respect of the remuneration paid to all those employees of the foreign subsidiaries who are citizens of the United States and who perform services outside the United States (other than services which constitute employment) for the foreign subsidiaries. However, liability is incurred only with respect to that portion of such remuneration paid by the foreign subsidiary which is attributable to services performed during the period for which the agreement is in effect with respect to such subsidiary, and then only to the extent that the remuneration would constitute wages if the services to which the remuneration is attributable were performed in the United States. Liability with respect to such remuneration is incurred in an amount equivalent to the sum of the employee and employer taxes which would be imposed by sections 3101 and 3111, respectively, if such remuneration constituted wages. If an individual performs services for more than one of the foreign subsidiaries named in an agreement, including any amendment thereof, such services are regarded as being performed in the employ of a single employer for purposes of determining the amount of the remuneration for such services which would constitute wages if the services were performed in the United States. See § 36.3121(l)(9)–1, relating to the treatment of a domestic corporation as a separate entity in its capacity as a party to an agreement.

(2) *Examples.* The application of paragraph (a)(1) of this section may be illustrated by the following examples:

Example 1. P. a domestic corporation, has entered into an agreement as provided in § 36.3121(l)(1)–1, effective with respect to services performed on and after January 1, 1955. Three foreign subsidiaries, S–1, S–2, and S–3 are named in the agreement. A, a citizen of the United States, is employed during 1955 by S–1, S–2, and S–3, for the performance outside the United States of services covered by the agreement. In 1955 A is paid remuneration of $2,500 for such services by each of the foreign subsidiaries. The circumstances are such that the entire $7,500 would constitute wages if the services has been performed in the United States. However, only $4,200 of such remuneration would constitute wages if the services had been performed in the United States for a single employer, and

it is with respect to this amount only that P incurs liability under its agreement.

Example 2. On August 1, 1955, P, the domestic corporation in the preceding example, amends its agreement to include therein its foreign subsidiary S–4. The amendment is in effect with respect to S–4 for the period beginning with October 1, 1955. B, a citizen of the United States, is employed by S–4 throughout 1955 for the performance of services outside the United States. B is paid remuneration of $500 in each month of 1955 for these services. The circumstances are such that the first $4,200 of such remuneration would constitute wages if the services had been performed in the United States, and, except for the $4,200 limitation, the remainder of such remuneration would constitute wages if the services had been so performed. P incurs no liability with respect to remuneration paid B for services performed for S–4 prior to October 1, 1955. However, P incurs liability under its agreement with respect to the $1,500 paid B in October, November, and December 1955, for services performed in these months. Since the remuneration paid to B for services performed during the first nine months of 1955 is not covered by the agreement, such remuneration is not taken into account in computing the $4,200 limitation or the liability under the agreement.

Example 3. Assume the same facts as in example 2 except that B's services for S–4 during December 1955 are of a character which if performed within the United States would be excepted from employment. Accordingly, P incurs no liability under the agreement with respect to the $500.00 paid in December 1955 for such services.

(3) *Determination of liability.* The amount of the liability referred to in paragraph (a)(1) of this section incurred by a domestic corporation for any period shall be determined in the same manner as liability for the employee tax and for the employer tax imposed by the Federal Insurance Contributions Act is determined, pursuant to regulations relating to the taxes under such act as in effect for the same period, with respect to wages paid by an employer to an employee.

(b) *Liability for amounts equivalent to interest or penalties.* A domestic corporation which has entered into an agreement as provided in § 36.3121(l)(1)–1 also incurs liability under the agreement for amounts equivalent to the amount of interest, additions to the taxes, additional amounts, and penalties which would be applicable if the remuneration for services covered by the agreement constituted wages.

(c) *Deductions from employees' remuneration.* There is no obligation to deduct, or cause to be deducted, from the remuneration of any employee of a foreign subsidiary any part of the amount due from a domestic corporation under its agreement. Whether such deduction shall be made is a matter for settlement between the employee and the domestic corporation or such other person as may be concerned.

(d) *Cross reference.* For other obligations of a domestic corporation under an agreement, see § 36.3121(l)(1)–1.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955, as amended by T.D. 6390, 24 FR 4831, June 13, 1959]

§ 36.3121(l)(2)–1 Effective period of agreement.

(a) *In general.* An agreement entered into as provided in § 36.3121(l) (1)–1 shall be in effect for the period beginning with the first day of the calendar quarter in which the agreement is signed by the district director or director of the service center, or the first day of the calendar quarter following the calendar quarter in which the agreement is signed by the district director or director of the service center, whichever is specified in the agreement. In no case, however, shall the agreement be effective for any calendar quarter which begins prior to January 1, 1955.

(b) *Amendment of agreement.* If an amendment on Form 2032 Supplement (filed by a domestic corporation to include in its agreement services performed for a foreign subsidiary not previously named therein) is signed by the district director or director of the service center, within the quarter for which the agreement is first effective or within the first calendar month following such quarter, the agreement shall be effective with respect to the subsidiary named in the amendment as of the date such agreement first became effective. However, if the amendment is signed by the district director or director of the service center after the last day of the fourth month for which the agreement is in effect, such agreement shall be in effect with respect to the subsidiary named in the amendment for the period beginning with the first day of the calendar quarter following the

calendar quarter in which the amendment is signed by the district director or director of the service center.

[T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(3)–1 Termination of agreement by domestic corporation or by reason of change in stock ownership.

(a) *Termination by domestic corporation.* (1) A domestic corporation which has entered into an agreement under section 3121(l)(1) with respect to one or more of its foreign subsidiaries may terminate such agreement in part or in its entirety by giving (for calendar quarters beginning before 1969, to the district director for the internal revenue district in which is located the principal place of business in the United States of the domestic corporation; and for calendar quarters beginning after 1968, except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents) to the director of the service center serving such internal revenue district 2 years' advance notice in writing of its desire so to terminate the agreement at the end of a specified calendar quarter: *Provided*, That, at the time of the receipt of such notice by such internal revenue officer, the agreement has been in effect with respect to the subsidiary or subsidiaries covered by the notice for at least 8 years. The notice of termination shall be signed and dated and shall show (i) the title of the officer authorized to sign the notice, (ii) the name, address, and identification number of the domestic corporation, (iii) the internal revenue officer with whom the agreement was entered into, (iv) the name and address of each foreign subsidiary with respect to which the agreement is to be terminated, (v) the date on which the agreement became effective with respect to each such foreign subsidiary, and (vi) the date on which the agreement is to be terminated with respect to each such foreign subsidiary. The notice shall be submitted in duplicate and shall be accompanied by a certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing authorization for the notice of termination. No particular form is prescribed for the notice of termination. The Internal Revenue Service will transmit one copy of the notice of termination to the Department of Health, Education, and Welfare.

(2) A notice of termination given by a domestic corporation in respect of any one or more of its foreign subsidiaries may be revoked by the corporation with respect to any such subsidiary or subsidiaries by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of revocation. The notice of revocation shall be filed with the internal revenue officer with whom the notice of termination was filed. Such notice of revocation shall be signed and dated and shall show (i) the title of the officer authorized to sign the notice of revocation, (ii) the name, address, and identification number of the domestic corporation, (iii) the name and address of each foreign subsidiary with respect to which the notice of termination is revoked, and (iv) the date of the notice of termination to be revoked. The notice shall be submitted in duplicate and shall be accompanied by a certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing authorization for the notice of revocation. No particular form is prescribed for the notice of revocation. The Internal Revenue Service will transmit one copy of the notice of revocation to the Department of Health, Education, and Welfare.

(b) *Termination by reason of change in stock ownership.* (1) The period for which an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is in effect with respect to a foreign corporation is automatically terminated at the end of the calendar quarter in which the foreign corporation ceases, at any time in such quarter, to be a foreign subsidiary of the domestic corporation. See § 36.3121(l)(8)–1, relating to definition of foreign subsidiary.

(2) A domestic corporation which has entered into an agreement as provided in § 36.3121(l)(1)–1 shall furnish (for calendar quarters beginning before 1969, to the district director for the internal revenue district in which is located its principal place of business in the

United States; and for calendar quarters beginning after 1968, except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents) to the director of the service center serving such internal revenue district) written notification in the event that a foreign corporation named in the agreement, including any amendment thereof, as a foreign subsidiary of the domestic corporation ceases to be its foreign subsidiary. The written notification shall be furnished in duplicate on or before the last day of the first month following the close of the calendar quarter in which the foreign corporation ceases, at any time in such quarter, to be a foreign subsidiary of the domestic corporation. Such notification shall be signed and dated by the president or other principal officer of the domestic corporation. The written notification shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the domestic corporation, (iii) the internal revenue officer with whom the agreement was entered into, (iv) the date on which the agreement was entered into, (v) the name and address of the foreign corporation with respect to which the notification is furnished, and (vi) the date on which the foreign corporation ceased to be a foreign subsidiary of the domestic corporation. No particular form is prescribed for the written notification. The Internal Revenue Service will transmit one copy of the written notification to the Department of Health, Education, and Welfare.

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(4)–1 Termination of agreement by Commissioner.

(a) *Notice of termination.* The period for which an agreement entered into with a domestic corporation as provided in § 36.3121(l)(1)–1 is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the domestic corporation has failed to comply substantially with the terms of the agreement. The Commissioner shall give the corporation not less than 60 days' advance notice in writing that the period for which the agreement is in effect will terminate at the end of the calendar quarter specified in the notice of termination.

(b) *Revocation of notice of termination.* A notice of termination given to a domestic corporation by the Commissioner may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education and Welfare by giving written notice of revocation to the corporation prior to the close of the calendar quarter specified in the notice of termination.

§ 36.3121(l)(5)–1 Effect of termination.

(a) *Termination of entire agreement.* (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the domestic corporation, pursuant to § 36.3121(l)(3)–1(a), with respect to all foreign subsidiaries named in the agreement, including any amendment thereof, an agreement may not again be entered into by the domestic corporation under the provisions of section 3121(l)(1).

(2) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the Commissioner, pursuant to § 36.3121(l)(4)–1 (a), an agreement may not again be entered into by the domestic corporation under the provisions of section 3121(l)(1).

(3) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated automatically by reason of a change in stock ownership (see § 36.3121(l)(3)–1(b)) with respect to all foreign corporations named in the agreement, including any amendment thereof, a new agreement may be entered into by the domestic corporation, as provided in § 36.3121(l)(1)–1, with respect to any foreign corporation which is a foreign subsidiary of the domestic corporation.

(b) *Partial termination of agreement.* (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated by the domestic corporation,

pursuant to § 36.3121(l)(3)–1(a), with respect to one or more foreign subsidiaries named in the agreement, including any amendment thereof, the period for which the agreement is in effect will continue with respect to any other foreign subsidiary or subsidiaries named in the agreement (or amendment). However, the agreement may not thereafter be amended to include any foreign subsidiary with respect to which the effective period of the agreement has been terminated.

(2) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 is terminated automatically by reason of a change in stock ownership (see § 36.3121(l)(3)–1(b)) with respect to a foreign corporation which has ceased to be a foreign subsidiary of the domestic corporation, but the period for which the agreement is in effect continues with respect to one or more other foreign subsidiaries, the agreement may not thereafter be amended to include such foreign corporation even though the foreign corporation may again become a foreign subsidiary of the domestic corporation.

§ 36.3121(l)(7)–1 Overpayments and underpayments.

(a) *Adjustments*—(1) *In general.* Errors in the payment of amounts for which liability equivalent to the employee and employer taxes with respect to any payment of remuneration is incurred by a domestic corporation pursuant to its agreement are adjustable by the domestic corporation in certain cases without interest. However, not all corrections made under this section constitute adjustments within the meaning of the regulations in this part. The various situations in which such corrections constitute adjustments are set forth in paragraphs (a)(2) and (3) of this section. All corrections in respect of underpayments and all adjustments or credits in respect of overpayments made under this section must be reported on a return filed by the domestic corporation under the regulations in this part and not on a return filed with respect to the employee and employer taxes imposed by sections 3101 and 3111, respectively. Every return on which such a correction (by adjustment, credit, or otherwise) is reported pursuant to this section must have securely attached as a part thereof a statement explaining the error in respect of which the correction is made, designating the calendar quarter in which the error was ascertained, and setting forth such other information as would be required if the correction were in respect of an overpayment or underpayment of taxes under the Federal Insurance Contributions Act. An error is ascertained when the domestic corporation has sufficient knowledge of the error to be able to correct it. An underpayment may not be corrected under this section after receipt from the district director or director of the service center of written notification of the amount due and demand for payment thereof, but the amount shall be paid in accordance with such notification.

(2) *Underpayments.* If a domestic corporation fails to report, on a return filed under the regulations in this part, all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation shall adjust the underpayment by reporting the additional amount due as an adjustment on a return or supplemental return filed on or before the last day on which the return for the return period in which the error is ascertained is required to be filed. The amount of each underpayment adjusted in accordance with this subparagraph shall be paid, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

(3) *Overpayments.* If a domestic corporation pays more than the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation may correct the error, subject to the requirements and under the conditions stated in this paragraph, by deducting the amount of the overpayment from the amount of liability reported on a return filed by

the domestic corporation, except that—

(i) A correction may not be made in respect of any part of an overpayment which was collected from an individual by reason of the agreement unless the domestic corporation (a) has repaid the amount so collected to the individual, has secured the written receipt of the individual showing the date and amount of the repayment, and retains such receipt as a part of its records, or (b) has reimbursed the individual by reducing the amounts which otherwise should have been deducted from his remuneration by reason of the agreement; and

(ii) A correction may not be made in one calendar year in respect of any part of an overpayment which was collected from an individual in a prior calendar year unless the domestic corporation has secured the written statement of the individual showing that he has not claimed and will not claim refund or credit of the amount so collected, and retains such receipt as a part of its records. See §31.6413(c)–1 of this chapter, relating to claims for special credit or refund.

The correction constitutes an adjustment under this subparagraph only if it is reported on the return for the period in which the error is ascertained or on the return for the next following period, and then only if the correction is reported within the statutory period of limitation upon refund or credit of overpayments of amounts due under the agreement. See paragraph (b)(2)(iii) of this section relating to such statutory period. A claim for credit or refund may be filed in accordance with the provisions of paragraph (b)(2) of this section for any overpayment of an amount due under the agreement which is not adjusted under this subparagraph.

(b) *Errors not adjustable*—(1) *Underpayments.* If a domestic corporation fails to report all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, and such underpayment is not reported as an adjustment within the time prescribed by paragraph (a)(2) of this section, the amount of such underpayment shall be reported on the domestic corporation's next return, or shall be reported immediately on a supplemental return for the return period in which such payment of remuneration was made. The reporting of an underpayment under this subparagraph does not constitute an adjustment without interest.

(2) *Overpayments.* (i) If more than the correct amount due from a domestic corporation pursuant to its agreement (including the amount of any interest or addition) is paid and the amount of the overpayment is not adjusted under paragraph (a) (3) of this section, the domestic corporation may file a claim for refund or credit. Except as otherwise provided in this subparagraph, such claim shall be made in the same manner and subject to the same conditions as to allowance of the claim as would be the case if the claim were in respect of an overpayment of taxes under the Federal Insurance Contributions Act. Refund or credit of an amount erroneously paid by a domestic corporation under its agreement may be allowed only to the domestic corporation.

(ii) Any claim filed under this subparagraph shall be plainly marked ''Claim under section 3121(1).''

(iii) No refund or credit of an overpayment of the amount due from a domestic corporation under its agreement will be allowed after the expiration of 2 years after the date of payment of such overpayment, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 2-year period.

(c) *Deductions from employees' remuneration.* If a domestic corporation deducts, or causes to be deducted, from the remuneration of an individual for services covered by the agreement amounts which are more or less than the employee tax which would be deductible therefrom if such remuneration constituted wages, any repayment to the individual (except to the extent otherwise provided in this section), or further collection from the individual, in respect of such deduction is a matter for settlement between the individual

and the domestic corporation or such other person as may be concerned.

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(8)–1 Definition of foreign subsidiary.

(a) *Prior to August 1, 1956.* (1) For the period January 1, 1955 to July 31, 1956, inclusive, a foreign corporation is a foreign subsidiary of a domestic corporation, within the meaning of the regulations in this part, if—

(i) More than 50 percent of the voting stock of the foreign corporation is owned by the domestic corporation; or

(ii) More than 50 percent of the voting stock of the foreign corporation is owned by a second foreign corporation and more than 50 percent of the voting stock of the second foreign corporation is owned by the domestic corporation.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example 1. P, a domestic corporation, owns 51 percent of the voting stock of S–1, a foreign corporation. S–1 owns 51 percent of the voting stock of S–2, a foreign corporation. S–2 owns 51 percent of the voting stock of S–3, a foreign corporation. S–1 and S–2 are foreign subsidiaries of P for purposes of the regulations in this part. Since neither P nor S–1 owns more than 50 percent of the voting stock of S–3, S–3 is not a foreign subsidiary of P within the meaning of the regulations in this part.

Example 2. Assume the same facts as those stated in example *1* except that 25 percent of the voting stock of S–2 is transferred by S–1 to P. P owns no other voting stock of S–2. Accordingly, after the transfer, P and S–1 together own more than 50 percent of the voting stock of S–2, but neither P nor S–1 alone owns more than 50 percent of such stock. S–2 ceases to be a foreign subsidiary of P when such transfer is effected.

(b) *On or after August 1, 1956.* (1) Beginning August 1, 1956, a foreign corporation is a foreign subsidiary of a domestic corporation, within the meaning of the regulations in this part, if—

(i) Not less than 20 percent of the voting stock of the foreign corporation is owned by the domestic corporation; or

(ii) More than 50 percent of the voting stock of the foreign corporation is owned by a second foreign corporation and not less than 20 percent of the voting stock of the second foreign corporation is owned by the domestic corporation.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example 1. P, a domestic corporation owns 20 percent of the voting stock of S–1, a foreign corporation. S–1 is, therefore, a foreign subsidiary of P. S–1 owns 51 percent and P owns 15 percent of the voting stock of S–2, a foreign corporation. S–2 is also a foreign subsidiary of P, and this would be so even if P owned none of the voting stock of S–2. S–2 owns 51 percent, S–1 owns 39 percent, and P owns 10 percent of the voting stock of S–3, a foreign corporation. Since P owns less than 20 percent of the voting stock of S–2 and less than 20 percent of the voting stock of S–3, and since S–1 owns not more than 50 percent of the voting stock of S–3, S–3 is not a foreign subsidiary of P within the meaning of the regulations in this part.

Example 2. Assume the same facts as those stated in example *1* except that 4 percent of the voting stock of S–2 is transferred by S–1 to P. After, as well as before, the transfer of 66 percent of the voting stock of S–2 is owned by P and S–1 together. After the transfer, however, P owns less than 20 percent and S–1 owns not more than 50 percent of the voting stock of S–2. When such transfer is effected S–2 ceases to be a foreign subsidiary of P for purposes of the regulations in this part.

(c) *Transfer of stock ownership.* The transfer of the voting stock of a foreign corporation which is a foreign subsidiary of a domestic corporation within the meaning of section 3121(l)(8) will not affect the status of the foreign corporation as such a foreign subsidiary if at all times either of the percentage tests stated in section 3121(l)(8), relating to ownership of the voting stock of such foreign corporation, is met.

(d) *Meaning of ''stock''.* The term ''stock'', as used in the regulations in this part, has the meaning assigned by paragraph (7) of section 7701(a). Section 7701(a)(7) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title [Internal Revenue Code of 1954], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(7) *Stock.* The term ''stock'' includes shares in an association, joint-stock company, or insurance company.

[T.D. 6390, 24 FR 4831, June 13, 1959]

§ 36.3121(l)(9)–1 Domestic corporation as separate entity.

A domestic corporation which enters into an agreement as provided in § 36.3121(l)(1)–1 shall, for purposes of the regulations in this part and for purposes of section 6413(c)(2)(C), relating to special credits or refunds, be considered an employer in its capacity as a party to such agreement separate and apart from its identity as an employer incurring liability for the employee tax and employer tax on the wages of its own employees. Thus, if a citizen of the United States performs services in employment for the domestic corporation and at any time within the same calendar year performs services covered by the agreement as an employee of one or more foreign subsidiaries named therein, the limitation on wages provided in section 3121(a) (1) has application separately as to the wages for employment performed in the employ of the domestic corporation and as to the remuneration for services covered by the agreement performed in the employ of such foreign subsidiary or subsidiaries. All services covered by the agreement whether performed in the employ of one or more than one such foreign subsidiary are regarded for purposes of the wage limitation as having been performed in the employ of the domestic corporation in its separate capacity as a party to the agreement. Similarly, any remuneration for such services which, if the services were performed in the United States, would be excluded from wages unless a certain amount of such remuneration is paid by a single employer within a specified period (for example, remuneration for agricultural labor) is regarded, for purposes of determining whether the domestic corporation incurs liability under its agreement with respect to such remuneration, as having been paid by the domestic corporation in its separate capacity as a party to the agreement. All remuneration received by an employee for services covered by the agreement is deemed, for purposes of the special credit or refund provisions contained in section 6413(c), to have been received from the domestic corporation as an employer in its separate capacity as a party to the agreement.

§ 36.3121(l)(10)–1 Requirements in respect of liability under agreement.

To the extent not inconsistent with, or otherwise provided in, the regulations in this part, the requirements and duties (relating to identification number, account numbers, wage information statements to employees, record keeping, etc.) imposed on an employer for any period with respect to the taxes imposed by the Federal Insurance Contributions Act are hereby made applicable to a domestic corporation with respect to its obligations and liabilities, for the same period, under an agreement entered into as provided in § 36.3121(l)(1)–1.

§ 36.3121(l)(10)–2 Identification.

(a) *Domestic corporation.* A domestic corporation which has secured, or is required to secure, an identification number as an employer having in its employ one or more individuals in employment for wages is not required to secure an identification number under the regulations in this part.

(b) *Employees.* Every employee performing services covered by an agreement shall have the same duties in respect of an account number as would be the case if the employee were performing services in employment for the domestic corporation.

§ 36.3121(l)(10)–3 Returns.

(a) The forms prescribed for use in making returns of the taxes imposed by the Federal Insurance Contributions Act (except any forms particularly prescribed for use by household employers or by employers filing returns in Puerto Rico) shall be used by a domestic corporation in making returns of its liability under an agreement entered into as provided in § 36.3121(l)(1)–1. Returns of such liability shall be made separate and apart from any returns required of the domestic corporation in respect of the taxes imposed by the Federal Insurance Contributions Act. The domestic corporation shall plainly mark ''3121(l) Agreement'' at the top of each return, each detachable schedule thereof, and each paper or document constituting a part of the return, filed by the domestic corporation pursuant to the regulations in this part. Returns required under the regulations in this

part shall be made by the domestic corporation as if all services covered by the agreement, whether performed in the employ of one or more than one foreign subsidiary, were performed in the employ of the domestic corporation as an employer in its separate capacity as a party to the agreement.

(b) Each return required under the regulations in this part must be filed on or before the last day of the month following the period for which the return is made.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955, as amended by T.D. 6390, 24 FR 4832, June 13, 1959]

§ 36.3121(l)(10)–4 Payment of amounts equivalent to tax.

A domestic corporation which has entered into an agreement as provided in § 36.3121(l)(1)–1 is not required to make deposits with an authorized financial institution of any amount for which liability is incurred under its agreement.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7953, 49 FR 19646, May 9, 1984; T.D. 8952, 66 FR 33832, June 26, 2001]

PARTS 37–39 [RESERVED]